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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CRAIGSLIST, INC., a Delaware
corporation,

Plaintiff,

v.

DEALERCMO, INC., a California
corporation; and Does 1 through 10,
inclusive,

Defendants.

Case No.

COMPLAINT FOR:

- (1) Federal Trademark Infringement
- (2) Federal False Designation of Origin
- (3) Federal Dilution of a Famous Mark
- (4) Cybersquatting
- (5) Common Law Unfair Competition

DEMAND FOR JURY TRIAL

1 For its Complaint against Defendants DealerCMO, Inc. and Does 1-10, craigslist, Inc.
 2 (“craigslist”) alleges as follows:

3 **INTRODUCTION**

4 1. craigslist provides local community classifieds, largely without charge and free
 5 from third-party advertising and marketing. Many tens of millions of users rely on these unique
 6 marketplaces for finding and/or offering basic necessities in their local areas, such as
 7 employment, housing, transportation, used goods, services, romance, friendship, and community
 8 information.

9 2. The craigslist trademark is indisputably famous. Indeed, the defendants opted to
 10 trade off of the fame of that name rather than create their own brand by launching an auto
 11 posting company called “CraigsMax.” This unauthorized use of a confusingly similar mark
 12 improperly and unfairly infringes craigslist’s valuable trademark rights.

13 3. By this action, craigslist seeks to put a stop to the defendants’ unlawful conduct
 14 and obtain compensation for the violations that have occurred thus far.

15 **JURISDICTION AND VENUE**

16 4. This is a civil action alleging trademark infringement, false designation of origin
 17 and unfair competition, dilution, and cyberpiracy under the Lanham Act, 15 U.S.C. §§ 1114,
 18 1125.

19 5. Pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § 1338(a), this Court has subject
 20 matter jurisdiction over craigslist’s claims for relief for violation of the federal trademark and
 21 unfair competition statutes. Pursuant to 28 U.S.C. § 1338(b), this Court has supplemental
 22 jurisdiction over craigslist’s state law claim because the claim is joined with substantial and
 23 related claims under the Lanham Act. This Court also has supplemental jurisdiction over the
 24 state law claim pursuant to 28 U.S.C. § 1367(a) because all of craigslist’s claims arise out of a
 25 common nucleus of operative facts.

26 6. This Court has personal jurisdiction over the defendants because they reside and
 27 maintain offices in this State.

28 7. Venue is proper in this District under 28 U.S.C. § 1391, because a substantial part

of the events or omissions giving rise to the claims occurred in this District.

8. This is an intellectual property action to be assigned on a district-wide basis under Civil Local Rule 3-2. This case may also be assigned to the San Francisco Division, as a substantial part of the events giving rise to the alleged claims occurred in San Francisco County.

THE PARTIES

9. craigslist, Inc. is a Delaware corporation, with its principal place of business in San Francisco, California.

8 10. DealerCMO, Inc. is a California corporation, with its principal place of business
9 in San Jose, California.

11. Does 1-10 are persons or entities responsible in whole or in part for the
wrongdoing alleged herein (“Doe Defendants”). craigslist is informed and believes, and based
thereon, alleges that each of the Doe Defendants participated in, ratified, endorsed, or was
otherwise involved in the acts complained of, and that they have liability for such acts. craigslist
will amend this Complaint if and when the identities of such persons or entities and/or the scope
of their actions become known.

16 12. DealerCMO, Inc. and the Doe Defendants, and their agents, affiliates, and other
17 co-conspirators are collectively referred to as “Defendants.”

FACTS

19 A. **craigslist and Its Trademarks.**

13. Founded in San Francisco, California in 1995 by Craig Newmark, craigslist began
14. as an email list for friends and co-workers to share information about events in and around the
15. San Francisco Bay Area. It grew over time in size and scope, and became the world's largest
16. online forum for local classified advertising and community discussions. craigslist continues to
17. maintain its headquarters in San Francisco.

25 14. Today craigslist is one of the most visited sites on the internet, with hundreds of
26 billions of page views served annually. More than 60 million Americans visit craigslist each
27 month, and they collectively post several hundred million classified ads each year.

28 15. craigslist is the owner of the CRAIGSLIST® mark and the following U.S. Federal

1 Registrations (the “Registrations”):

2 a. No. 2,395,628 for the CRAIGSLIST® mark in Classes 35 and 38. This
3 registration is incontestable.

4 b. No. 2,905,107 for the CRAIGSLIST® mark in Class 38. This registration
5 is incontestable.

6 c. No. 2,985,065 for the CRAIGSLIST® mark in Class 35. This registration
7 is incontestable.

8 d. No. 3,008,562 for the CRAIGSLIST® mark in Classes 36 and 42. This
9 registration is incontestable.

10 2. craigslist has also registered the CRAIGSLIST® mark in many other countries
11 throughout the world.

12 3. craigslist has used the CRAIGSLIST® mark in commerce since 1995. craigslist’s
13 use has been substantially continuous and exclusive. craigslist therefore owns longstanding
14 common law rights in the CRAIGSLIST® mark.

15 4. craigslist has attained strong name recognition in the CRAIGSLIST® mark. The
16 mark has come to be associated with craigslist and identifies craigslist as the source of
17 advertising, information, bulletin board, database, and other services offered in connection with
18 the mark.

19 5. The CRAIGSLIST® mark appears repeatedly in every single craigslist post, and
20 throughout nearly every page on its websites, worldwide.

21 6. craigslist has also developed substantial goodwill in the CRAIGSLIST® mark.

22 7. There can be little doubt that the CRAIGSLIST® mark is famous in the United
23 States. Not only is the craigslist website visited by more than 60 million Americans each month,
24 but the CRAIGSLIST® mark is regularly referenced across the American pop culture spectrum,
25 in television shows, movies, books, magazines and press articles. Indeed, the CRAIGSLIST®
26 mark, and its associated services, are ubiquitous in, and integral parts of, American society and
27 culture.

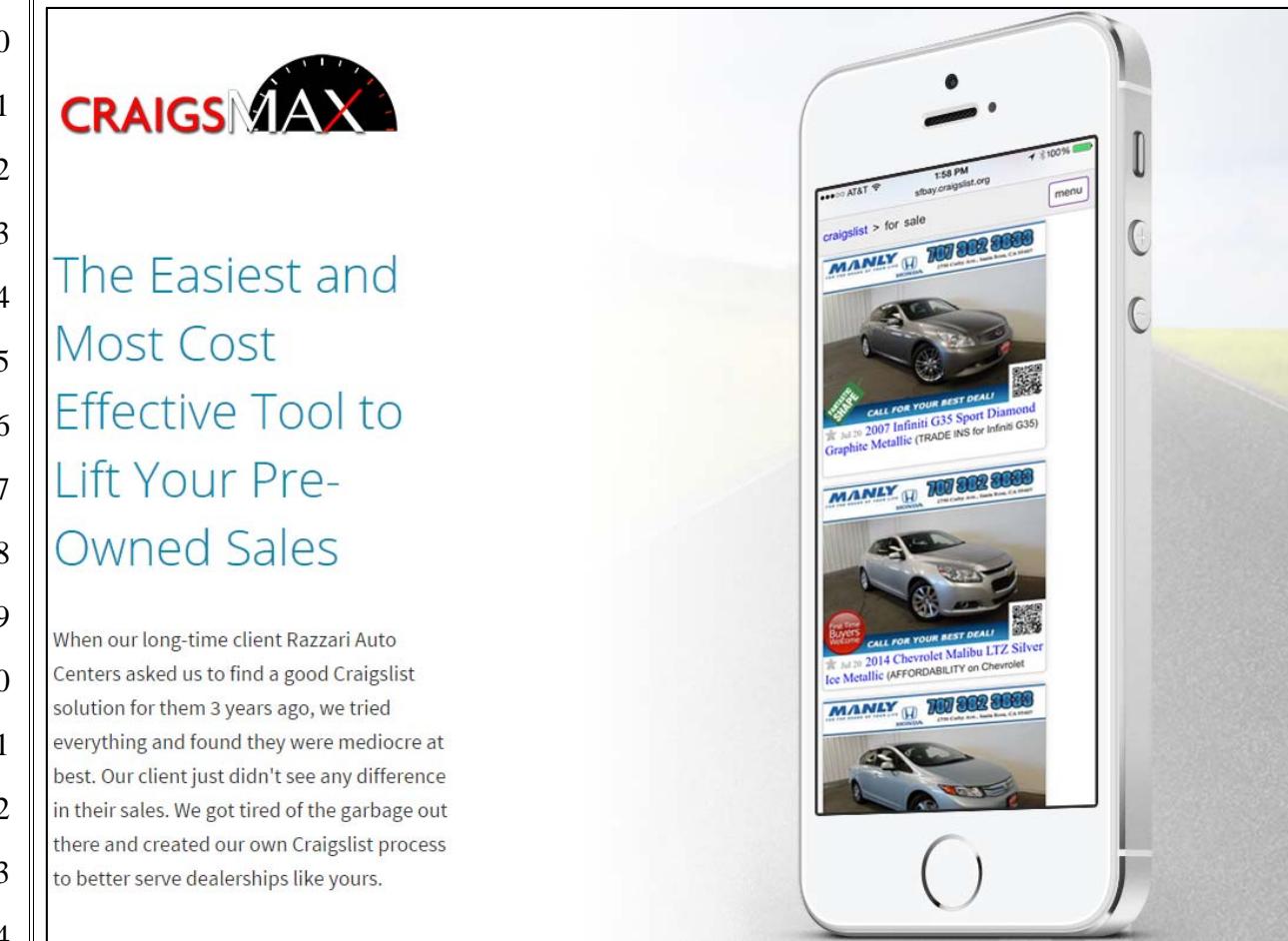
28 8. The CRAIGSLIST® mark is among craigslist’s most important and valuable

1 assets.

2 **B. Defendants' Infringing Conduct.**

3 16. On information and belief, Defendants launched their "Craigslist posting service"
 4 under the CRAIGSMAX trademark in or about 2014, and claim to be "the easiest and most cost
 5 effective tool to lift your pre-owned sales" by "creat[ing] our own Craigslist process to better
 6 serve [auto] dealerships." They further claim that "Your search for an effective Craigslist
 7 solution ends here."

8 17. The CRAIGSMAX website, at *craigslist.com*, displays a mobile phone showing
 9 a page from the craigslist website:



19 When our long-time client Razzari Auto
 20 Centers asked us to find a good Craigslist
 21 solution for them 3 years ago, we tried
 22 everything and found they were mediocre at
 23 best. Our client just didn't see any difference
 24 in their sales. We got tired of the garbage out
 25 there and created our own Craigslist process
 26 to better serve dealerships like yours.

27 18. Recognizing the fame of the CRAIGSLIST® mark, Defendants tout on their
 28 website the "Power of Craigslist":

The Power of Craigslist

Craigslist Statistics

Total number of Craigslist sites	700
Number of Craigslist daily queries worldwide	50,000,000
Number of new classified ads published on Craigslist every month	40,000,000
Number of Used Car ads viewed on Craigslist	9,200,000
Number of page views Craigslist gets every month	20,000,000,000
Number of Americans that use Craigslist per year	50,000,000

10 19. The website goes on to tout: “Craigslist posting companies rise and fall like your
11 blood pressure working in the car business. We’ve been a dominant player on Craigslist for
12 years.”

13 20. Defendants filed a federal trademark application on August 13, 2015 for the
14 CRAIGSMAX 2 & Design mark in Class 35 for “Advertising and marketing consultancy;
15 Advertising on the Internet for others; Advertising, marketing and promotional services for
16 automotive dealerships; Consulting in sales techniques and sales programmes.”

17 21. The U.S. Patent and Trademark Office (“USPTO”) rejected Defendants’
18 application on November 11, 2015, citing a likelihood of confusion with the CRAIGSLIST®
19 mark.

20 22. Specifically, the Examiner found that “[t]he marks are similar in appearance,
21 sound, connotation and commercial impression because they both begin with the arbitrary term
22 ‘CRAIGS.’ Although [Defendants’] mark also contains the terms ‘MAX 2’ and a design and
23 [craigslist’s] mark contains the term ‘LIST’ the mere addition of these terms does not
24 meaningfully alter the sound, appearance, and commercial impression in such a way to avoid the
25 likelihood of confusion.”

26 23. The Examiner further found that “[t]he services [offered by Defendants and by
27 craigslist] are related because [Defendants’] advertising services encompass services identical to
28 those of [craigslist].”

1 24. Based on these findings, the Examiner refused registration of Defendants' mark
2 under Section 2(d) of the Trademark Act.

3 25. Defendants' continued use of the CRAIGSMAX mark in commerce in violation
4 of craigslist's valuable intellectual property rights is knowing, intentional and willful, and is
5 causing harm to craigslist.

6 26. Because of Defendants' willful continuing infringement and unlawful conduct,
7 craigslist is now forced to bring this Complaint to protect its valuable and longstanding
8 intellectual property rights. craigslist had to retain counsel and incur attorneys' fees and costs
9 (and continues to incur those fees and costs) to prosecute this suit and pursue its claims.

10 27. craigslist's interest in protecting its intellectual property rights and services from
11 customer confusion outweigh any harm to Defendants. The public interest is best served by
12 granting the requested relief against Defendants in this case.

FIRST CLAIM FOR RELIEF

Federal Trademark Infringement, 15 U.S.C. § 1114

15 28. craigslist realleges and incorporates by reference all of the factual allegations set
16 forth above.

17 | 29. craigslist owns the CRAIGSLIST® mark and the Registrations.

18 30. craigslist is the senior user of the CRAIGSLIST® mark, as it began use of the
19 mark in interstate commerce long before Defendants' first use of their infringing CRAIGSMAX
20 mark.

21 31. Defendants do not have authorization, license or permission from craigslist to
22 market and sell their services under the CRAIGSLIST® mark or any confusingly similar mark.

23 32. When adopting the CRAIGSMAX mark, Defendants were aware of the
24 CRAIGSLIST® mark, as they were on constructive notice based on craigslist's longstanding
25 federal registrations. In fact, it is clear from Defendants' marketing materials that they are
26 purposely trading off the famous CRAIGSLIST® mark when using the CRAIGSMAX mark.
27 Thus Defendants' unauthorized use of their mark was knowing, intentional and willful.

28 33. Defendants' use of the CRAIGSLIST® mark in interstate commerce constitutes a

1 reproduction, counterfeit, copy, or colorable imitation of a registered trademark of craigslist in
2 connection with the sale, offering for sale, distribution, or advertising of goods or services on or
3 in connection with which such use is likely to cause confusion or mistake, or to deceive. For
4 example, users of Defendants' website and service are likely to be confused as to whether
5 Defendants' websites and services are associated or approved by craigslist.

6 34. As a direct and proximate result of Defendants' misconduct, craigslist has been,
7 and will continue to be, irreparably harmed and injured, and such harm will continue unless
8 enjoined by this Court. craigslist has no adequate remedy at law and is therefore entitled to
9 injunctive relief.

35. Defendants' misconduct has been and is knowing, deliberate, and willful.

11 Pursuant to 15 U.S.C. §1117(a), Defendants' willful use of the CRAIGSLIST® mark without
12 excuse or justification makes this an exceptional case, entitling craigslist to an award of treble
13 damages and reasonable attorneys' fees and costs.

SECOND CLAIM FOR RELIEF

16 36. craigslist realleges and incorporates by reference all of the factual allegations set
17 forth above.

18 37. craigslist owns the CRAIGSLIST® mark and longstanding common law rights in
19 that mark.

20 38. craigslist is the senior user of the CRAIGSLIST® mark, as it began use of the
21 mark in interstate commerce long before Defendants' first use of their infringing CRAIGSMAX
22 mark.

23 39. Defendants do not have authorization, license or permission from craigslist to
24 market and sell their services under the CRAIGSLIST® mark or any confusingly similar mark.

25 40. When adopting the CRAIGSMAX mark, Defendants were aware of the
26 CRAIGSLIST® mark, as they were on constructive notice based on craigslist's longstanding
27 federal registrations. In fact, it is clear from Defendants' marketing materials that they are
28 purposely trading off the famous CRAIGSLIST® mark when using the CRAIGSMAX mark.

Thus Defendants' unauthorized use of their mark was knowing, intentional and willful.

41. Defendants' use of the CRAIGSLIST® mark in interstate commerce constitutes a reproduction, counterfeit, copy, or colorable imitation of a registered trademark of craigslist in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion or mistake, or to deceive. For example, users of Defendants' website and service are likely to be confused as to whether Defendants' websites and services are associated or approved by craigslist.

8 42. As a direct and proximate result of Defendants' misconduct, craigslist has been,
9 and will continue to be, irreparably harmed and injured, and such harm will continue unless
10 enjoined by this Court. craigslist has no adequate remedy at law and is therefore entitled to
11 injunctive relief.

12 43. Defendants' misconduct has been and is knowing, deliberate, and willful.
13 Pursuant to 15 U.S.C. §1117(a), Defendants' willful use of the CRAIGSLIST® mark without
14 excuse or justification makes this an exceptional case, entitling craigslist to an award of treble
15 damages and reasonable attorneys' fees and costs.

THIRD CLAIM FOR RELIEF
Federal Dilution of a Famous Mark, 15 U.S.C. § 1125(c)

18 44. craigslist realleges and incorporates by reference all of the factual allegations set
19 forth above.

20 45. The CRAIGSLIST® mark is a famous and distinctive mark, and is widely
21 recognized by the general consuming public of the United States as a designation of source of
22 craigslist's services.

23 46. The CRAIGSLIST® mark was famous prior to the time Defendants commenced
24 use of the CRAIGSMAX mark in commerce.

25 47. Defendants' websites display the famous CRAIGSLIST® mark numerous times,
26 and use a mark that dilutes the CRAIGSLIST® mark.

27 48. Defendants' use of the CRAIGSLIST® mark is likely to cause dilution by
28 blurring, by impairing the distinctiveness of the CRAIGSLIST® mark, thereby damaging

1 craigslist's goodwill and disparaging craigslist's rights in the CRAIGSLIST® mark. Defendants'
2 acts and conduct are in violation of the Lanham Act, 15 U.S.C. § 1125(c).

3 49. In addition, Defendants' use of the CRAIGSMAX mark is likely to cause an
4 association arising from the similarity between the CRAIGSMAX mark and CRAIGSLIST®
5 mark that impairs the distinctiveness of the CRAIGSLIST® mark. Defendants' use of the
6 CRAIGSMAX mark in commerce is likely to cause dilution by blurring of the famous
7 CRAIGSLIST® mark in violation of the Lanham Act, 15 U.S.C. §1125(c).

8 50. As a direct and proximate result of Defendants' misconduct, craigslist has been,
9 and will continue to be irreparably harmed and injured, and such harm will continue unless
10 enjoined by this Court. This harm includes a reduction in the distinctiveness of the
11 CRAIGSLIST® mark and injury to craigslist's reputation that cannot be remedied through
12 damages, and craigslist has no remedy at law. craigslist is therefore entitled to injunctive relief
13 as set forth herein.

14 51. Defendants willfully intended to trade on craigslist's reputation or to cause
15 dilution of the famous CRAIGSLIST® mark and, therefore, craigslist is entitled to monetary
16 relief under 15 U.S.C. § 1117, including profits, damages, treble damages and costs of the action.

17 52. Defendants' misconduct has been and is knowing, deliberate, and willful. This
18 willful use of the CRAIGSLIST® mark without excuse or justification renders this an exceptional
19 case and entitles craigslist to its reasonable attorneys' fees and costs.

FOURTH CLAIM FOR RELIEF
Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d)

22 53. craigslist realleges and incorporates by reference all of the factual allegations set
23 forth above.

24 54. The CRAIGSLIST® mark was famous and distinctive at the time Defendants
25 registered *craigslist.com*.

26 55. Defendants, without regard to the products or services provided by craigslist and
27 with a bad faith intent to profit from the CRAIGSLIST® mark, registered, trafficked in, and
28 continue to use this domain name that is identical or confusingly similar to or dilutive of the

1 CRAIGSLIST® mark, in violation of the Lanham Act, 15 U.S.C. § 1125(d).

2 56. As a direct and proximate result of Defendants' misconduct, craigslist has been,
 3 and will continue to be irreparably harmed and injured, and such harm will continue unless the
 4 Court orders that the *craigslist.com* domain name be forfeited or cancelled, or transferred to
 5 craigslist.

6 57. Defendants' misconduct has been and is knowing, deliberate, and willful. This
 7 willful use of the CRAIGSLIST® mark without excuse or justification renders this an exceptional
 8 case and entitles craigslist to its reasonable attorneys' fees and costs.

9 58. Alternatively, craigslist is entitled to elect statutory damages instead of actual
 10 damages and profits, pursuant to 15 U.S.C. § 1117(d).

11 **FIFTH CLAIM FOR RELIEF**
 12 **California Common Law Unfair Competition**

13 59. craigslist realleges and incorporates by reference all of the factual allegations set
 14 forth above.

15 60. craigslist has expended significant time and expense in developing the
 16 CRAIGSLIST® mark and the high-quality products and services it markets and sells under that
 17 mark. The CRAIGSLIST® mark is famous, has been very successful and has developed a
 18 substantial reputation and goodwill in the marketplace.

19 61. Through their actions as described above, Defendants have misappropriated
 20 craigslist's efforts and are exploiting the CRAIGSLIST® mark and craigslist's reputation to
 21 market and sell their services under the CRAIGSMAX mark. These actions constitute unfair
 22 competition.

23 62. As a direct and proximate result of Defendants' wrongful conduct, craigslist has
 24 been and will continue to be injured.

25 63. Unless an injunction is issued enjoining Defendants' unfairly competitive
 26 conduct, craigslist will continue to be irreparably harmed. craigslist has no adequate remedy at
 27 law.

28 64. On information and belief, Defendants have acted willfully, intentionally and

1 maliciously, such that craigslist is entitled to punitive damages.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, craigslist prays for the following relief:

4 A. An injunction ordering Defendants, and their officers, directors, members, agents,
5 servants, employees, and attorneys, and all other persons acting in concert or participating with
6 them, who receive actual notice of the injunction order by personal or other service, to:

7 1. Cease all use of the CRAIGSLIST® mark, the CRAIGSMAX mark, and
8 any other mark or name likely to cause confusion with the CRAIGSLIST® mark, in connection
9 with the promotion, advertising, offering for sale, or sale, of any products or services;

10 2. Never use any false designation of origin, false representation, or any false
11 or misleading description of fact, that can, or is likely to, lead the consuming public or individual
12 members thereof, to believe that any products or services produced, offered, promoted,
13 marketed, advertised, provided or sold by Defendants are in any manner associated or connected
14 with craigslist, or are licensed, approved or authorized in any way by craigslist;

15 3. Never represent, suggest in any fashion to any third party, or perform any
16 act that may give rise to the belief, that Defendants, or any of their goods or services, are related
17 to, authorized or sponsored by craigslist;

18 4. Cease all use of the domain name *craigslistmax.com* and any similar domain
19 names, and never register or apply for any domain names that contain any of craigslist's
20 trademarks, or any domain names confusingly similar to any of craigslist's trademarks;

21 5. Never unfairly compete with craigslist in any manner whatsoever, or
22 engage in any unfair, fraudulent or deceptive business practices that relate in any way to the
23 production, distribution, marketing, and/or sale of products and services bearing the
24 CRAIGSLIST® mark; and

25 6. Never apply for, or seek to register as a trademark, service mark, DBA, or
26 trade name the CRAIGSMAX mark or name, or any other mark or name that is likely to cause
27 confusion with the CRAIGSLIST® mark.

28 B. An order pursuant to 15 U.S.C. § 1116(a) directing Defendants to file with the

1 Court and serve upon craigslist's counsel, within thirty (30) days after service of the order of
2 injunction, a report in writing under oath setting forth in detail the manner and form in which
3 Defendants have complied with the injunction.

4 C. An order transferring all domain names, including but not limited to
5 *craigslistmax.com*, in Defendants' possession, custody or control that include the term "craig," any
6 misspelling thereof, or are otherwise confusingly similar to or contain the CRAIGSLIST® mark.

7 D. An order finding that, by the acts complained of above, Defendants have infringed
8 the Registrations in violation of 15 U.S.C. § 1114.

9 E. An order finding that, by the acts complained of above, Defendants have created a
10 false designation of origin and false representation of association, in violation of 15 U.S.C.
11 § 1125(a).

12 F. An order finding that the CRAIGSLIST® mark is famous, and, by the acts
13 complained of above, Defendants diluted the CRAIGSLIST® mark, in violation of 15 U.S.C.
14 § 1125(c).

15 G. An order finding that, by the acts complained of above, Defendants have engaged
16 in cybersquatting, in violation of 15 U.S.C. § 1125(d).

17 H. An order finding that, by the acts complained of above, Defendants have engaged
18 in common law unfair competition.

19 I. An order pursuant to 15 U.S.C. § 1117(a) compelling Defendants to account to
20 craigslist for any and all profits derived by them from their unlawful and infringing conduct.

21 J. An order awarding craigslist damages as follows:

22 1. Pursuant to 15 U.S.C. § 1117(a), all of Defendants' profits or gains of any
23 kind from their acts of trademark infringement, false designation of origin, dilution, and
24 cybersquatting, including a trebling of those damages;

25 2. At craigslist's election, the maximum allowable amount of statutory
26 damages permitted under 15 U.S.C. § 1117(d) for Defendants' acts of cybersquatting; and

27 3. Punitive damages pursuant to California common law.

28 K. An order pursuant to 15 U.S.C. § 1117(a) finding that this is an exceptional case

1 and awarding craigslist its reasonable attorneys' fees.

2 L. An order awarding craigslist all of its costs, disbursements and other expenses
3 incurred due to Defendants' unlawful conduct, pursuant to 15 U.S.C. § 1117(a).

4 M. An order awarding craigslist interest.

5 N. An order awarding craigslist such other relief as the Court deems appropriate.

6 Dated: March 23, 2016

LATHAM & WATKINS LLP

7 By: /s/ Perry J. Viscount
8 Perry J. Viscount

9 Attorney for Plaintiff
CRAIGSLIST, INC.

10 **DEMAND FOR JURY TRIAL**

11 craigslist demands a jury trial on all issues triable to a jury.

12 Dated: March 23, 2016

LATHAM & WATKINS LLP

13 By: /s/ Perry J. Viscount
14 Perry J. Viscount

15 Attorney for Plaintiff
CRAIGSLIST, INC.